



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/145047

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 03, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly terminated the Petitioner from the BadgerCare Core plan.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Nikitia Howse

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 27, 2012, the agency issued a Notice of Decision to the Petition notifying him that his BadgerCare Core benefits would end effective April 1, 2012 due to income over program

limits. The notice also informed the Petitioner that an appeal of this decision must be filed with the Division of Hearings and Appeals by May 17, 2012.

3. On June 13, 2012, the Petitioner applied for FoodShare benefits.
4. On August 17, 2012, the agency issued a Notice of Decision. The notice informed the Petitioner that he is eligible for FS benefits of \$200/month effective August 1, 2012. The notice also informed the Petitioner that his BadgerCare benefits would end effective September 1, 2012. The notice informed the Petitioner of a right to appeal the health care benefit determination by filing an appeal with the Division of Hearings and Appeals by October 17, 2012.
5. On November 7, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance and BadgerCare must be filed within 45 days of the date of the action. Sections 49.45(5), Wis. Stats. A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the agency testified that the Petitioner initially filed a timely appeal of the termination of his BadgerCare Caore plan but that he withdrew his appeal and his benefits ended in May, 2012. I did not receive specific evidence of this prior appeal. However, I did review the Notice of Decision issued on February 27, 2012 informing the Petitioner of the need to file an appeal by May 17, 2012.

In the agency notice of August 17, 2012, the Petitioner was informed that his BadgerCare Core benefits would end on September 1, 2012. It is undisputed that the Petitioner was not receiving BadgerCare Core benefits at the time of the notice and that his benefits terminated in May, 2012. The agency did not, therefore, take any negative action against the Petitioner in September, 2012. I further note that the Petitioner did not file an appeal by October 17, 2012 so that even if the agency had taken a negative action against the Petitioner on September 1, 2012, the appeal was not timely.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

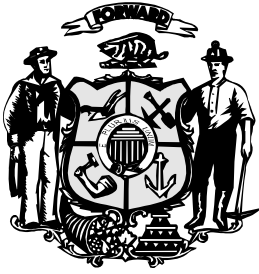
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 12, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability